IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.31 OF 2006

IN

SUMMARY SUIT NO.3513 OF 2005

The Cotton Textiles Export Promotion Council. ...Plaintiff

vs.

Punjab National Bank. ...Defendant.

Mr.D.K.Zaiwala i/b. M/s.Mulla & Mulla & C.B & C., for Plaintiff.

Mr.Premlal i/b. Mr.N.Shenoy, for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 8th June, 2006.

P.C.:-

1. The plaintiff has filed the suit on the basis of a bank guarantee which is at Exhibit A to the plaint. Perusal of that bank guarantee shows that the amount in relation to which the guarantee was given could be demanded even after the expiry of the bank guarantee. The bank guarantee annexed to

the plaint at “Exhibit A” was current till 15.1.2003. It was renewed for the period from 15.1.2003 till 14.1.2004 by the bank guarantee dated 17.1.2003. It appears from the bank guarantee dated 17.1.2003 that now a contrary stipulation was added requiring the plaintiff to make demand in writing till the bank guarantee is current and one month thereafter i.e. till 14.2.2004. According to the plaintiff, this added term is contrary to the provisions of Section 24 of the Contract.

2. After having heard the learned Counsel for both the sides, I find that for deciding the suit, the Court has to construe the terms of the bank guarantee and also to consider the question whether the newly added term is contrary to the provisions of Section 28 of the Contract Act. In short it cannot be said that the defendant has no defence to offer or that the defence offered by the defendant is merely an eyewash. One more aspect that is to be considered is that the defendant is a nationalised bank. In my opinion, therefore, for all these reasons it will not be appropriate to pass a decree at this stage without

trial. The summons for judgment is disposed of. Leave to defend the suit is granted to the defendant. Written statement to be filed within a period of eight weeks from today.